



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2017 Biennium

<b>Bill #</b>	SB0322	<b>Title:</b>	Provide for Fourth Amendment protections
<b>Primary Sponsor:</b>	Fielder, Jennifer	<b>Status:</b>	As Introduced

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Significant Local Gov Impact     | <input type="checkbox"/> Needs to be included in HB 2             | <input checked="" type="checkbox"/> Technical Concerns   |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>	<u>FY 2018 Difference</u>	<u>FY 2019 Difference</u>
<b>Expenditures:</b>				
General Fund		----- Unknown -----		
State Special Revenue		----- Unknown -----		
Federal Special Revenue		----- Unknown -----		
<b>Revenue:</b>				
General Fund		----- Unknown -----		
State Special Revenue		----- Unknown -----		
Federal Special Revenue		----- Unknown -----		
<b>Net Impact-General Fund Balance:</b>	=====	=====	=====	=====

**Description of fiscal impact:** SB 322 requires that all of the governmental transactions described within the bill, including “collecting, monitoring, or disseminating the personal papers or effects of any person” defined as “property, personal communications including printed documents, oral communications, and any type of electronic communication” be predicated on express consent, search warrant, or a judicially recognized exception. The fiscal impact is anticipated to be significant but cannot be determined.

## FISCAL ANALYSIS

### Assumptions:

#### **Department of Transportation (MDT)**

1. The Motor Carrier Services Division assumes it will lose its eligibility for MCSAP grants; a total of \$3.2 million annually of which \$1.4 million is for the basic MCSAP, \$1 million for the Border Enforcement Grant, \$200 thousand for the New Entrant Grant, and \$600 thousand for the Expanded CVISN grant annually.
2. The impact to the Construction and Rail, Transit and Planning Programs is difficult to quantify. The potential impact would reduce federal aid revenues in the Construction Program by \$356,902,998 and

\$26,954,945 for the Rail, Transit and Planning Program respectively. This is a potential total loss of federal revenue to the Montana Department of Transportation of \$387,057,943 each fiscal year.

3. Because the bill prohibits state employees from assisting their governmental employer in collecting or monitoring “all property” and “all personal communications,” it would prohibit much of the work performed by Department of Transportation employees, for example monitoring highway construction equipment, monitoring motor vehicles for weight/height/width restrictions, or monitoring the use of safety equipment by motor vehicles as examples. While some of this work may be exempt as a “judicially recognized exception to the search warrant requirement” some of it is not. The fiscal impact cannot be determined.

#### **Department of Labor and Industry (DLI)**

4. A large portion of the work done by the Department of Labor and Industry, Employment Relations Division, would be affected by this legislation. The fiscal impact on these areas of work is unknown at this time. The areas of work affected include:
  - a. Human rights case information (including dual-filed charges) could not be sent to the Equal Employment Opportunity Commission (EEOC) (Title 49, Chapters 1-2, MCA).
  - b. Any human rights case involving a state employee as the charging party would hinder the Human Rights Bureau from being able to complete an investigation (Title 49, Chapters 1-2, MCA).
  - c. The Labor Standards Bureau currently requests and shares information among various state agencies and the United States Department of Labor in the course of their investigations and would be unable to do this under this legislation (Title 39, Chapters 3-4, MCA).
  - d. The Labor Standards Bureau has assisted and requested assistance from local law enforcement agencies when processing wage claims and would be unable to do so under this legislation (Title 39, Chapters 3-4, MCA).
  - e. The Labor Standards Bureau would be hindered in the handling of grievances in the Collective Bargaining Unit with the inability to request and share information with other state agencies (Title 39, Chapter 31, MCA).
  - f. Due to the large number of Uninsured Employers who are sole proprietors, the Uninsured Employers Fund would be unable to collect payroll and financial information during the course of their investigations (Title 39, Chapter 5, MCA).
  - g. The Uninsured Employers Fund would be unable to collect information in regards to accidents and injuries (Title 39, Chapter 5, MCA).
  - h. Information from employees or employers on the status of a worker would not be able to be collected by the department. This would result in the Independent Contractor/Construction Registration Unit not being able to perform their statutorily required job functions (Title 39, Chapter 9, MCA).
  - i. Workers’ Compensation claims information could not be sent from the Department to the Montana State Fund and the Montana State Fund would be unable to provide claims information to the Department (Title 39, Chapter 2, MCA).
  - j. Public sector employers could not report injuries to the department for either the workers’ compensation or safety functions (Title 39, Chapter 3, MCA).
  - k. The Safety and Health Bureau would be unable to investigation injuries and fatalities in mine operations and with public employers (Title 50, Chapters 71-73, MCA)
5. The Unemployment Insurance Division (UI) may be prohibited from providing information received from an employer to another agency without the consent of the party. The assumption is that UI could not provide certification to the Internal Revenue Service (IRS) regarding the dollar amount of UI contributions made by an employer unless they individually obtained each employer’s express permission to do so. If UI is unable to provide that information, the employer would be billed for the full 6% of FUTA tax. UI would then be required to provide each employer a written certification of contributions paid, that the employer can then provide to the IRS.

6. It is unclear whether or not the Research & Analysis Bureau (R&A) would be allowed to access Unemployment Insurance wage records. R&A currently uses these wage records as a part of their Memorandum of Agreement with the Office of the Commissioner of Higher Education (OCHE) and other state Labor Management Information offices to complete wage record matches. R&A also uses these wage records to complete economic analysis. While there would be no direct fiscal impact as a result of this, it would impact such things as OCHE's ability to track and report on outcomes for their graduates and Department of Correction's ability to track and report on outcomes of offenders. It would also impact the quality and type of economic analysis that Montana (through R&A) and other states are able to provide.

**Department of Administration (DOA)**

7. SB 322 would essentially prohibit the DOA Banking and Financial Institutions Division from being able to perform examinations of financial institutions. The fiscal impact cannot be determined.

**Other State Agencies**

8. The fiscal impact to other state agencies cannot be determined.

**Technical Notes:**

**MDOT**

9. The bill is unclear as to whether data collected and shared by the Montana Department of Justice (MDOJ) – Motor Vehicle Division (MVD). However, if this data is covered by the bill, the MVD would be non-compliant with Commercial Driver License (CDL) program requirements and MDOT's construction funds may be sanctioned. Should this bill pass, Montana's non-compliance with CDL regulations may result in up to 5% of the Federal Aid Highway apportionment being withheld in the first year and 10% in the second and subsequent years. Based on 2014 apportionment of \$395,819,807, a reduction of \$19.8 million (5%) in FY 2016 and \$39.6 million (10%) in subsequent years could be withheld from MDOT.

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*Sponsor's Initials*

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*Date*

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*Budget Director's Initials*

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*Date*